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09/761,433	01/16/2001	James Steven Hayko	33262	5201
116	7590	05/21/2004	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			DELGADO, MICHAEL A	
			ART UNIT	PAPER NUMBER
			2144	
DATE MAILED: 05/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)
09/761,433	HAYKO ET AL.
Examiner	Art Unit
Michael S. A. Delgado	2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.5.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-10 and 12-31 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,701,441 by Balasurbramaniam et al.

In claim 1, Balasurbramaniam teaches about an application provision system for use in a server (Fig 2, 100), the server being connectable to a network that comprises at least one client (Fig 2, 104) and at least one server, the application provision system comprising (Fig 2,):

a server resident process “ActiveX” for controlling the provision of an application to a client (Col 9, lines 35-45); and

client-server functionality that is deliverable to the client, the client-server functionality the provision of the application to the client by communicating with the server resident process (Col 11, lines 50-60).

In claim 2, Balasurbramaniam teaches about an application provision system according to claim 1 wherein the server resident process includes a common gateway interface (Col 11, lines 5-15).

In claim 3, Balasurbramaniam teaches about an application provision system according to claim 1 wherein the client server functionality is a platform independent executable program attached to a web page (Col 9, lines 35-55).

In claim 4, Balasurbramaniam teaches about an application provision system according to claim 3 wherein the platform independent executable program is a Java applet (Col 9, lines 45-55).

In claim 5, Balasurbramaniam teaches about an application provision system for use in a server (Fig 2, 100), the server being connectable to a network that comprises at least one client (Fig 2, 104) and at least one server, the client comprising an operating system and a browser, the application provision system comprising (Fig 2) (Col 3, lines 15-25):

a server resident process, which is able to respond to queries (Col 16, lines 50-67);  
a deliverable file that is deliverable to the client, the file including a platform independent executable program “Java” and parameter information (addressing parameter to facilitate search) (Col 9, lines 35-55) (Col 11, lines 5-20); and

a means for establishing a communications link for providing communications between the server resident process and the operating system of the client the server resident process is able to perform operations within the operating system of the client (Col 11, lines 50-60).

In claim 6, Balasurbramaniam teaches about an application provision system according to claim 5 further comprising a database comprising information for the locating of files associated with an application that can be installed on the client (Col 9, lines 55-60).

In claim 7, Balasurbramaniam teaches about an application provision system according to claim 5 wherein the application provision system further comprises;

at least one file associated with at least one application wherein the application is installable on the client (Col 9, lines 55-60); and

at least one web page for downloading to the browser located on the client (Col 9, lines 35-55).

In claim 8, Balasurbramaniam teaches about an application provision system according to claim 5 wherein the file deliverable to the client includes a Java applet (Col 9, lines 50-60).

In claim 9, Balasurbramaniam teaches about an application provision system according to claim 5 wherein the server resident processes includes a common gateway interface (Col 11, lines 5-15).

In claim 10, Balasurbramaniam teaches about an application provision system according to claim 5 wherein the server resident process, client deliverable file and at least one file associated with the at least one application are located on the same server (Fig 2, 100) (Col 11, lines 50-60).

In claim 12, Balasurbramaniam teaches about a web page for delivery from a server to a browser operating on a client (Col 9, lines 35-55), the server (Fig 2, 100) and client being comprised by a network comprising at least one client (Fig 2, 104) and at least one server, the server comprising server based processes for automatic provision of an application (Col 9, lines 35-55), the web page for use in a system for the automatic provision of an application to the client, the web page comprising (Col 9, lines 20-40):

a platform independent executable program “Java” for the provision of communications between the client and server based processes (Col 9, lines 35-55); and  
parameter information wherein the parameter information is sufficient to initiate the server based processes and to determine if an application is installed on the client (Col 11, lines 50-67).

In claim 13, Balasurbramaniam teaches about a web page according to claim 10 wherein the platform independent executable program is a Java applet (Col 9, lines 35-55).

In claim 14, Balasurbramaniam teaches about a method of providing a requested application from a server to a client by an application provision system, the method comprising the steps of (Col 4, lines 45-65):

providing a first web page “main window” to a client, the first web page containing at least one link that can be selected wherein the link is associated with a document (Col 4, lines 45-65) (Col 5, lines 1-15);

receiving a request for (link to document) a document by a server based process, from a client (Col 4, lines 45-65) (Col 5, lines 1-15);

providing a second web page “sub-window” to a client, the second web having client server functionality “another instance of browser program” attached to it which requests an application “OpenDoc” to access the requested document (Col 4, lines 45-65) (Col 5, lines 1-15); and

providing the requested application to the client wherein the requested application allows the client to access the requested document (Col 5, lines 1-15).

In claim 15, Balasurbramaniam teaches about a method for providing a requested application according to claim 14 wherein the step of providing the application provides the entire application to the client (Col 11, lines 60-65).

In claim 16, Balasurbramaniam teaches about a method for providing a requested application according to claim 14 wherein the step of providing the application provides selected files associated with the application to the client to update an existing instance of the application on the client (Col 11, lines 60-65).

In claim 17, Balasurbramaniam teaches about a method of receiving a requested application from a server to a client by an application provision system, the method comprising the steps of (Fig 2):

receiving a first web page “main window” from a server, the first web page containing at least one link “spawn” that can be selected wherein the link is associated with a document (Col 4, lines 45-65) (Col 5, lines 1-15);

providing a request for a document to a server based process, from a client(Col 4, lines 45-65) (Col 5, lines 1-15);

receiving a second web page “sub-window” from a server, the second web having client server functionality “another instance of browser program” attached to it which requests an application “OpenDoc” to access the requested document (Col 4, lines 45-65) (Col 5, lines 1-15); and

receiving the requested application from the server wherein the requested application allows the client to access the requested document (Col 4, lines 45-65) (Col 5, lines 1-15).

In claim 18, Balasurbramaniam teaches about a method for receiving a requested application according to claim 17 wherein the step of receiving the application receives the entire application from the client (Col 11, lines 60-65).

In claim 19, Balasurbramaniam teaches about an method for receiving a requested application according to claim 17 wherein the step of receiving the application receives selected

files associated with the application from the server to update an existing instance of the application on the client (Col 11, lines 60-65).

In claim 20, Balasurbramaniam teaches about a method for providing a requested application by a server (Fig 2, 100) to a client connected to a network comprising at least one client (Fig 2, 104) and at least one server; the server comprising at least one web page for downloading by the at least one client (Col 9, lines 35-55), the method comprising the steps of:

- providing client-server functionality “ActiveX” and a server resident process “server-side engines” on a server (Col 9, lines 25-55);
- delivering the client-server functionality to the client during the downloading of a web page to which the client-server functionality is attached (Col 9, lines 35-55);
- receiving by way of the server resident process a request for an application from the client, through the client-server functionality (Col 11, lines 50-60); and
- providing by way of the server resident process the requested application to the client, through the client-server functionality (Col 11, lines 50-60).

In claim 21, Balasurbramaniam teaches about a method for the automatic provision of a requested application from a server to a client (Col 11, lines 50-60);  
the server and client being elements of a network including at least one client and at least one server, the client operating a browser and an operating system, the method comprising the steps of (Fig 2):

downloading a first web page "main window" containing at least one link, the link indicating association a document, by a client from server to which the client is connected and in communications(Col 4, lines 45-65) (Col 5, lines 1-15);

selecting the a link on the downloaded web page "navigating" (Col 4, lines 45-65) (Col 5, lines 1-15);

downloading a second web page "sub-window" by a client from the server to which the client is connected and in communications wherein a platform independent executable program "Java" is attached to the second web page (Col 4, lines 45-65) (Col 5, lines 1-15) (Col 9, lines 35-55);

opening a new window of a browser operating on the client(Col 4, lines 45-65) (Col 5, lines 1-15);

invoking the platform independent executable program (link that run Java script) (Col 4, lines 45-65) (Col 5, lines 1-15) (Col 9, lines 35-55);

invoking at least one server resident process (Col 11, lines 20-65);

scanning the client, by the platform independent executable program to determine if an application to access the document is installed on the client (Col 11, lines 20-65);

providing the requested application on the client if the requested application was not located on the client (Col 11, lines 20-65); and

invoking the application (Col 11, lines 20-65).

In claim 22, Balasurbramaniam teaches about an method according to claim 21 further comprising the step of providing code which allows the performance of secure operations within the operating system of the client (Col 10, lines 50-60).

In claim 23, Balasurbramaniam teaches about a method according to claim 21 wherein the step of providing the requested application on the client comprises the steps of;

providing the setup executable associated with the requested application by the server to the client, if the setup executable does not exist on the client (Col 11, lines 20-65);

installing the setup executable file on the client, if the setup executable does not exist on the client (Col 11, lines 20-65);

invoking the setup executable file (Col 11, lines 20-65);

providing of files associated with the requested version of the application by the setup executable from the server to the client (Col 11, lines 20-65); and

installing native components on the client such that the native components do not interfere with the operating system of the client (Col 11, lines 20-65).

In claim 24, Balasurbramaniam teaches about a method according to claim 21 wherein the step of providing the requested application comprises the steps of:

determining if the version of the application previously installed ion the client is the same as the version of the application located on the server (Col 11, lines 50-60); and

installing the requested application on the client if the version of the requested

application on the client is not the version of the application located on the server (Col 11, lines 50-60).

In claim 25, Balasurbramaniam teaches about a method according to claim 24 wherein the step of determining if the version of an application installed on a client is the version that is being requested comprises the steps of:

querying an installation footprint of the installed application to determine the location of the application's files within the memory of the client (Col 11, lines 20-65);

determining the version of the application installed on the client (Col 11, lines 20-65);

transferring the version information of the application installed on the client to the server (Col 11, lines 20-65); and

comparing the version information of the version of the application installed on the client with version information associated with the version of the application located on the server (Col 11, lines 20-65).

In claim 26, Balasurbramaniam teaches about a method for the automatic provision of a requested application from a server to a client (Col 11, lines 20-65);

the server and client are elements of a network including at least one client and at least one server, the client operating a browser and an operating system, the method comprising the steps of (Fig 2):

providing a first page "main window" to a client, the first page having a link, the link being associated with a document (Col 4, lines 45-65) (Col 5, lines 1-15);

receiving a request for a second web page “sub-window” by way of the client selecting the link associated with the document (Col 4, lines 45-65) (Col 5, lines 1-15);

providing the second web page to the client wherein a platform independent executable program “Java” is attached to the second web page (Col 9, lines 35-55) (Col 4, lines 45-65) (Col 5, lines 1-15);

receiving communications from the platform independent executable program that is executing on the client (Col 11, lines 20-65);

invoking a server resident process (Col 11, lines 20-65);

communicating with the platform independent executable program located on the client to facilitate the determination of whether an application to access the document is present on the client (Col 11, lines 20-65);

providing files associated with the requested application to the client for installation of the requested application on the client (Col 11, lines 20-65);

transferring files associated with the application requested by the client to the client for installation of the application on the client (Col 11, lines 20-65); and

invoking the application (Col 11, lines 20-65).

In claim 27, Balasurbramaniam teaches about a method according to claim 26 wherein the step of providing files comprises the steps of:

providing the setup executable associated with the requested application by the server to the client, if the setup executable does not exist on the client (Col 11, lines 20-65);

installing the setup executable file on the client, if the setup executable does not exist on the client (Col 11, lines 20-65);  
invoking the setup executable file (Col 11, lines 50-65);  
providing of files associated with the requested version of the application by the setup executable from the server to the client (Col 11, lines 50-65); and  
installing native components on the client such that the native components do not interfere with the operating system of the client (Col 11, lines 50-65).

In claim 28, Balasurbramaniam teaches about a method according to claim 26 wherein the step of providing files comprises the steps of:

comparing the version of the application present on the client with the version information related to the application resident on the server if it was determined that the application was resident on the client (Col 11, lines 20-65); and  
transferring files associated with the application requested by the client to the client for installation of the application on the client if the version of the application on the client is not the same as the version of the application located on the server (Col 11, lines 20-65).

In claim 29, Balasurbramaniam teaches about a method according to claim 26 wherein the step of providing files comprises the steps of;

querying an installation footprint of the installed application to determine the location of the application's files within the memory of the client (Col 11, lines 20-65);  
determining the version of the application installed on the client (Col 11, lines 50-65);  
transferring the version information of the application installed on the client to the

server (Col 11, lines 50-65); and

comparing the version information of the version of the application installed on the client with version information associated with the version of the application located on the server (Col 11, lines 20-65).

In claim 30, Balasurbramaniam teaches about an computer readable memory element storing the instructions or statements for use in is the execution in a computer of a method for the automatic provision of an application from a server to a client; the server and client are elements of a network including at least one client and at least one server, the client operating a browser and an operating system, the method comprising the steps of (Fig 2):

providing a first page “main window” to a client, the first page having a link, the link being associated with a document(Col 4, lines 45-65) (Col 5, lines 1-15);

receiving a request for a second web page “sub-window” by way of the client selecting the link associated with the document (Col 4, lines 45-65) (Col 5, lines 1-15);

providing the second web page to the client wherein a platform independent executable program “Java” is attached to the second web page(Col 4, lines 45-65) (Col 5, lines 1-15) (Col 9, lines 35-55);

receiving communications from the platform independent executable program that is executing on the client (Col 11, lines 50-65);

invoking a server resident process (Col 11, lines 50-65);

communicating with the platform independent executable program located on the client to facilitate the determination of whether an application to access the document is present on the client (Col 11, lines 20-65);

providing files associated with the requested application to the client for installation of the requested application on the client (Col 11, lines 50-65);

transferring files associated with the application requested by the client to the client for installation of the application on the client (Col 11, lines 50-65); and

invoking the application (Col 11, lines 50-65).

In claim 31, Balasurbramaniam teaches about Electronic signals for use in the execution in a computer of a method for the automatic provision of a requested application from a server to a client (Fig 2);

the server and client are elements of a network including at least one client (Fig 2, 104) and at least one server (Fig 2, 100), the client operating a browser and an operating system (Col 9, lines 35-55), the method comprising the steps of:

providing a first page “main window” to a client, the first page having a link, the link being associated with a document (Col 4, lines 45-65) (Col 5, lines 1-15);

receiving a request for a second web page “sub-window” by way of the client selecting the link associated with the document (Col 4, lines 45-65) (Col 5, lines 1-15);

providing the second web page to the client wherein a platform independent executable program “Java” is attached to the second web page(Col 4, lines 45-65) (Col 5, lines 1-15) (Col 9, lines 35-55);

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receiving communications from the platform independent executable program that is executing on the client (Col 11, lines 50-65);  
invoking a server resident process (Col 11, lines 50-65);  
communicating with the platform independent executable program located on the client to facilitate the determination of whether an application to access the document is present on the client (Col 11, lines 20-65);  
providing files associated with the requested application to the client for installation of the requested application on the client (Col 11, lines 20-65);  
transferring files associated with the application requested by the client to the client for installation of the application on the client (Col 11, lines 20-65); and  
invoking the application (Col 11, lines 20-65).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,701,441 as applied to claim 5 above, and further in view of US Patent 6,606,744 by Mikurak.
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

In claim 11, Balasurbramaniam teaches all the limitation but does not explicitly teach about implementing the functionality of software update across different servers.

The concept of using more than one server to implement a service is well known in the art as disclosed by Mikurak (Col 172, lines 20-35). It would have been obvious at the time of the invention for some of ordinary skill to use more than one server to implement a service in order to prevent network congestion.

In an application that involves a large number of remote clients, there will always be network bottleneck. Bottleneck causes the network to be congested and the server will be overburden with the many requests from the clients. This will lead to down time, which is undesirable in business operations. By using more than one server, the burden of servicing many clients is shared across the different servers. By load balancing, the network is more robust and down time is reduced to a minimum.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,074,434 by Cole et al., teaches about a selection of code updates, data updates or new data for client.

US Patent No. 6,314,565 by Kenner et al., teaches about a system and method for automated identification, retrieval, and installation of multimedia software components.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael S. A. Delgado whose telephone number is 703-305-8057. The examiner can normally be reached on 7.30 AM - 5.30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM A CUCHLINSKI JR can be reached on (703)308-3873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MD  
May 15, 2004

  
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